

SECOND REGULAR SESSION

SENATE BILL NO. 1219

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5419S.011

AN ACT

To repeal sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, and 344.105, RSMo, and to enact in lieu thereof nine new sections relating to the licensing of nursing home administrators.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, and 344.105, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, 344.105, and 344.108, to read as follows:

344.020. No person shall act or serve in the capacity of a nursing home administrator without first procuring a license from the Missouri board of nursing home administrators as provided in sections 344.010 to [344.100] **344.108**. The board may issue a separate license to administrators of residential care facilities II, as defined in section 198.006, RSMo. Any individual who receives a license to operate a residential care facility II is not thereby authorized to operate any intermediate care facility or skilled nursing facility as those terms are defined in section 198.006, RSMo.

344.030. 1. An applicant for an initial license shall file a completed application with the board on a form provided by the board, accompanied by an application fee of one hundred dollars payable to the [director of revenue] **department of health and senior services**. Information provided in the application shall be given under oath subject to the penalties for making a false affidavit.

2. No initial license shall be issued to a person as a nursing home administrator unless:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 (1) The applicant provides the board satisfactory proof that the applicant
10 is twenty-one years of age or over, of good moral character and a high school
11 graduate or equivalent;

12 (2) The applicant provides the board satisfactory proof that the applicant
13 has had a minimum of three years' experience in health care administration or
14 two years of postsecondary education in health care administration or has
15 satisfactorily completed a course of instruction and training prescribed by the
16 board, which includes instruction in the needs properly to be served by nursing
17 homes, the protection of the interests of residents therein, and the elements of
18 good nursing home administration, or has presented evidence satisfactory to the
19 board of sufficient education, training, or experience in the foregoing fields to
20 administer, supervise and manage a nursing home; and

21 (3) The applicant passes [the written] **an** examination administered by
22 the board. If an applicant fails to make a passing grade on [the] **such**
23 examination [such], **the** applicant may make application for reexamination on a
24 form furnished by the board and may be retested [at the next regularly scheduled
25 examination]. If an applicant fails the examination a third time, the applicant
26 shall be required to complete a course of instruction prescribed and approved by
27 the board [before the applicant may reapply for examination]. **After**
28 **completion of the board-prescribed course of instruction, the applicant**
29 **may reapply for the board-administered examination. Applicants shall**
30 **not be licensed by the board after the applicant's third licensure**
31 **examination failure unless the applicant successfully completes the**
32 **board-prescribed course of instruction and passes the board-**
33 **administered examination. With regard to any nationally certified**
34 **examination required for licensure, examination scores from other**
35 **states shall not be recognized by the board after the applicant has**
36 **failed his or her third examination.** There shall be a separate,
37 nonrefundable fee for each examination. The board shall set the amount of the
38 fee for examination by rules and regulations promulgated pursuant to section
39 536.021, RSMo. The fee shall be set at a level to produce revenue which shall not
40 substantially exceed the cost and expense of administering the examination.

41 3. The board may issue a license through reciprocity to any person who
42 is regularly licensed as a nursing home administrator in any other state,
43 territory, or the District of Columbia, if the regulations for securing such license
44 are equivalent to those required in the state of Missouri. However, no license by

45 reciprocity shall be issued until the applicant passes a special examination
46 approved by the board, which will examine the applicant's knowledge of specific
47 provisions of Missouri statutes and regulations pertaining to nursing homes. The
48 applicant shall furnish satisfactory evidence that such applicant is of good moral
49 character and has acted in the capacity of a nursing home administrator in such
50 state, territory, or the District of Columbia, at least one year after the securing
51 of the license. The board, in its discretion, may enter into written reciprocal
52 agreements pursuant to this section with other states which have equivalent laws
53 and regulations.

54 4. Nothing in sections 344.010 to [344.100] **344.108**, or the rules or
55 regulations thereunder shall be construed to require an applicant for a license as
56 a nursing home administrator, who is employed by an institution listed and
57 certified by the Commission for Accreditation of Christian Science Nursing
58 Organizations/Facilities, Inc., to administer institutions certified by such
59 commission for the care and treatment of the sick in accordance with the creed
60 or tenets of a recognized church or religious denomination, to demonstrate
61 proficiency in any techniques or to meet any educational qualifications or
62 standards not in accord with the remedial care and treatment provided in such
63 institutions. The applicant's license shall be endorsed to confine the applicant's
64 practice to such institutions.

65 5. The board may issue a temporary emergency license for a period not to
66 exceed ninety days to a person twenty-one years of age or over, of good moral
67 character and a high school graduate or equivalent to serve as an acting nursing
68 home administrator, provided such person is replacing a licensed nursing home
69 administrator who has died, has been removed or has vacated the nursing home
70 administrator's position. No temporary emergency license may be issued to a
71 person who has had a nursing home administrator's license denied, suspended or
72 revoked. A temporary emergency license may be renewed for one additional
73 ninety-day period upon a showing that the person seeking the renewal of a
74 temporary emergency license meets the qualifications for licensure and has filed
75 an application for a regular license, accompanied by the application fee, and the
76 examination [has not yet been given] **results have not been received by the**
77 **board**. No temporary emergency license may be renewed more than one time.

344.040. 1. Every license issued under this chapter shall expire on June
2 thirtieth of the year following the year of issuance and every other year
3 thereafter, provided that licenses issued or renewed during the year 2006 may be

4 issued or renewed by the board for a period of either one or two years, as
5 provided by rule. Licensees seeking renewal shall, during the month of May of
6 the year of renewal, file an application for renewal on forms furnished by the
7 board, which shall include evidence satisfactory to the board of completion of the
8 approved continuing education hours required by the board, and shall be
9 accompanied by a renewal fee as provided by rule payable to the department of
10 health and senior services.

11 2. Upon receipt of an incomplete application for renewal, the board shall
12 grant the applicant a temporary permit which shall be in effect for thirty
13 days. The applicant is required to submit the required documentation or fee
14 within the thirty-day period, or the board may refuse to renew his
15 application. The thirty-day period can be extended for good cause shown for an
16 additional thirty days. Upon receipt of the approved continuing education credits
17 or other required documentation or fee within the appropriate time period, the
18 board shall issue a license.

19 3. The board shall renew the license of an applicant who has met all of
20 the requirements for renewal.

21 4. As a requirement for renewal of license, the board may require not
22 more than forty-eight clock hours of continuing education a year. The continuing
23 education provided for under this section shall be approved by the board. There
24 shall be a separate, nonrefundable fee for each single offering provider. The
25 board shall set the amount of fee for any single offering provided by rules and
26 regulations promulgated pursuant to section 536.021, RSMo. The fee shall be set
27 at a level to produce revenue which shall not substantially exceed the cost and
28 expense in administering and reviewing any single offering.

29 5. By April first of each year, the board shall mail an application for
30 renewal of license to every person whose license shall be renewed during the
31 current year. The applicant must submit such information as will enable the
32 board to determine if the applicant's license should be renewed. Information
33 provided in the application shall be given under oath.

34 6. Any licensee who fails to apply to renew his license by June thirtieth
35 of the licensee's year of renewal may be relicensed by the board if he meets the
36 requirements set forth by the board pursuant to sections 344.010 to [344.100]
37 **344.108** and pays the renewal fee required by rule, plus a penalty of twenty-five
38 dollars. No action shall be taken by the board in addition to a penalty of
39 twenty-five dollars imposed by this section against any such licensee whose

40 license has not expired for a period of more than two months, and who has had
41 no action in the preceding five years taken against them by the board, and who
42 has met all other licensure requirements by June thirtieth of the year of renewal;
43 provided, however, that nothing in this section shall prevent the board from
44 taking any other disciplinary action against a licensee if there shall exist a cause
45 for discipline pursuant to section 344.050. A person whose license has expired
46 for a period of more than twelve months must meet the requirements set out in
47 section 344.030 for initial licensure.

344.050. 1. The board may refuse to issue or renew any certificate of
2 registration or authority, permit or license required pursuant to this chapter for
3 one or any combination of causes stated in subsection 2 of this section. The board
4 shall notify the applicant in writing of the reasons for the refusal and shall advise
5 the applicant of [his] **the applicant's** right to file a complaint with the
6 administrative hearing commission as provided by chapter 621, RSMo. **As an**
7 **alternative to refusal to issue or renew any certificate, registration or**
8 **authority, permit or license, the board may, at its discretion, issue a**
9 **license which is subject to probation for any one or any combination of**
10 **causes stated in subsection 2 of this section. The board's order of**
11 **probation shall contain a statement of the terms and conditions of the**
12 **probation imposed, the basis therefore, the date such action shall**
13 **become effective, and a statement that the applicant has thirty days to**
14 **request in writing a hearing before the administrative hearing**
15 **commission. If no written request for a hearing is received by the**
16 **administrative hearing commission within the thirty-day period, the**
17 **right to seek review of the board's decision shall be considered waived.**

18 2. The board may cause a complaint to be filed with the administrative
19 hearing commission as provided by chapter 621, RSMo, against any holder of any
20 certificate of registration or authority, permit or license required by this chapter
21 or any person who has failed to renew or has surrendered his certificate of
22 registration or authority, permit or license for any one or any combination of the
23 following causes:

24 (1) Use or unlawful possession of any controlled substance, as defined in
25 chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a
26 person's ability to perform the work of any profession licensed or regulated by
27 this chapter;

28 (2) The person has been finally adjudicated and found guilty, or entered

29 a plea of guilty or nolo contendere, pursuant to criminal prosecution under the
30 laws of any state or of the United States, for any offense reasonably related to the
31 qualifications, functions or duties of any profession licensed or regulated under
32 this chapter, for any offense an essential element of which is fraud, dishonesty
33 or an act of violence, or for any offense involving moral turpitude, whether or not
34 sentence is imposed;

35 (3) Use of fraud, deception, misrepresentation or bribery in securing any
36 certificate of registration or authority, permit or license issued pursuant to this
37 chapter or in obtaining permission to take any examination given or required
38 pursuant to this chapter;

39 (4) Obtaining or attempting to obtain any fee, charge, tuition or other
40 compensation by fraud, deception or misrepresentation;

41 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation
42 or dishonesty in the performance of the functions or duties of any profession
43 licensed or regulated by this chapter;

44 (6) Violation of, or assisting or enabling any person to violate, any
45 provision of this chapter, or of any lawful rule or regulation adopted pursuant to
46 this chapter;

47 (7) **Violation of, or assisting or enabling any person to violate,**
48 **any provision of chapter 198, RSMo, or any rule or regulation**
49 **promulgated thereunder;**

50 (8) Impersonation of any person holding a certificate of registration or
51 authority, permit or license, or allowing any person to use [his] **such person's**
52 certificate of registration or authority, permit, license or diploma from any school;

53 [(8)] (9) Disciplinary action against the holder of a license or other right
54 to practice any profession regulated by this chapter granted by another state,
55 territory, federal agency or country upon grounds for which revocation or
56 suspension is authorized in this state;

57 [(9)] (10) A person is finally adjudged incapacitated or disabled by a
58 court of competent jurisdiction;

59 [(10)] (11) Assisting or enabling any person to practice or offer to
60 practice any profession licensed or regulated by this chapter who is not registered
61 and currently eligible to practice under this chapter;

62 [(11)] (12) Issuance of a certificate of registration or authority, permit
63 or license based upon a material mistake of fact;

64 [(12)] (13) Violation of the drug laws or rules and regulations of this

65 state, any other state or the federal government;

66 ~~[(13)]~~ **(14)** Knowingly failing to report abuse or neglect of a resident in
67 a long-term care facility, as required by section 198.070, RSMo, of which he ~~or~~
68 ~~she~~ has actual knowledge that it is abuse or neglect;

69 **(15) Violation of any professional trust or confidence;**

70 **(16) Having served as the operator, or any principal involved in**
71 **the operation of a facility licensed under chapter 198, RSMo, during**
72 **which time the facility has had its license revoked under section**
73 **198.036, RSMo, has entered into a consent agreement to obtain a**
74 **probationary license under subsection 5 of section 198.026, RSMo, has**
75 **had a license denied under subsection 2 of section 198.022, RSMo, or**
76 **has surrendered its license while under investigation.**

77 3. The administrative hearing commission shall have no authority to
78 require issuance of a license, pending a final determination by the commission,
79 in any case in which an applicant is seeking initial licensure.

80 4. No license may be suspended or revoked and no application for renewal
81 of a license may be denied under this section until the licensee has been afforded
82 an opportunity for hearing after due notice as provided in sections 621.015 to
83 621.205, RSMo.

84 5. Upon a finding by the administrative hearing commission that the
85 grounds, provided in subsection 2 of this section, for disciplinary action are met,
86 the board may, singly or in combination, [place upon probation,] **censure or**
87 **place the person named in the complaint on probation on such terms**
88 **as the board deems appropriate, or may** suspend or revoke [a] the
89 certificate [of registration or authority], permit or license. **The board may**
90 **exclude any application for up to five years for any person who has had**
91 **his or her license revoked by the board or has surrendered his or her**
92 **license to the board.**

344.060. 1. The director of the department of health and senior services
2 shall appoint ten suitable persons who together with the director of the division
3 of aging of the department of health and senior services shall constitute the
4 "Missouri Board of Nursing Home Administrators" which is hereby created within
5 the department of health and senior services and which shall have the functions,
6 powers and duties prescribed by sections 344.010 to [344.100] **344.108.**

7 2. In addition to the director of the [division of aging] **department of**
8 **health and senior services** or [his] **the director's** designee the membership

9 of the board shall consist of one licensed physician, two licensed health
10 professionals, one person from the field of health care education, four persons who
11 have been in general administrative charge of a licensed nursing home for a
12 period of at least five years immediately preceding their appointment, and two
13 public members. **The physician, the two licensed health care**
14 **professionals, and the health care educator shall be citizens of the**
15 **United States and taxpaying residents of the state of Missouri for one**
16 **year preceding their appointments. The four appointees who have been**
17 **in general administrative charge of a licensed nursing home shall be**
18 **citizens of the United States and either residents of the state of**
19 **Missouri for one year preceding their appointments or persons licensed**
20 **by the board with five years of employment in a licensed nursing home**
21 **in Missouri immediately preceding their appointment. The public**
22 **members shall be citizens of the United States, residents of the state of**
23 **Missouri for one year preceding their appointment, and registered**
24 **voters.** The public members shall be persons who are not, or never were,
25 licensed nursing home administrators or the spouse of such persons, or persons
26 who do not have or never have had a material, financial interest in either the
27 providing of licensed nursing home services or in an activity or organization
28 directly related to licensed nursing home administration. Neither the one
29 licensed physician, the two licensed health professionals, nor the person from the
30 health care education field shall have any financial interest in a licensed nursing
31 home.

32 3. The members of the board shall be appointed for three-year terms or
33 until their successors are appointed and qualified provided that no more than
34 four members' terms shall expire in the same year. All members appointed prior
35 to September 28, 1979, shall serve the term for which they were appointed. The
36 governor shall fill any vacancies on the board as necessary. Appointment to fill
37 an unexpired term shall not be considered an appointment for a full term. Board
38 membership, continued until successors are appointed and qualified, shall not
39 constitute an extension of the three-year term and the successors shall serve only
40 the remainder of the term.

41 4. Every member shall receive a certificate of appointment; and every
42 appointee, before entering upon his or her duties, shall take the oath of office
43 required by article VII, section 11, of the Constitution of Missouri.

44 5. Any member of the board may be removed by the director of the

45 department of health and senior services for misconduct, incompetency or neglect
46 to duty after first being given an opportunity to be heard in his **or her** own
47 behalf.

344.070. 1. The board shall annually elect one of its members as
2 president, another as vice president, and another as secretary. It shall adopt an
3 official seal. It shall file and preserve all written applications, petitions,
4 complaints, charges or requests made or presented to it. It shall cause to be kept
5 accurate records and minutes of its proceedings, and shall maintain a register of
6 the names and addresses of all persons holding licenses as nursing home
7 administrators. A copy of any entry in the register, or of any records or minutes
8 of the board, certified by the president or secretary of the board under its seal,
9 shall be received in evidence, to all intents and purposes as the original. The
10 board may employ such part- or full-time clerical assistance, purchase such
11 equipment and supplies, employ legal counsel, employ a part- or full-time
12 investigator, and incur travel and other expense, within the limits of its
13 appropriations.

14 2. The board shall adopt, amend and repeal rules and regulations
15 necessary to carry out the provisions of sections 344.030 to [344.100]
16 **344.108**. Any rule or regulation under the authority of sections 344.030 to
17 [344.100] **344.108** shall be promulgated in accordance with chapter 536,
18 RSMo. The committee on administrative rules may file a complaint in accordance
19 with the provisions of chapter 536, RSMo, before the commission contesting the
20 validity of any rule purportedly promulgated under the authority of sections
21 344.030 to [344.100] **344.108**. On filing any complaint in accordance with this
22 section, the administrative hearing commission shall immediately suspend that
23 portion of the rule which is challenged until the commission has determined the
24 matter. The commission shall hold a hearing within ten days of the filing to
25 determine the matter. No rule or portion of a rule promulgated under the
26 authority of this chapter shall become effective unless it has been promulgated
27 pursuant to the provisions of section 536.024, RSMo.

28 3. The board shall examine, license, and renew the license of duly
29 qualified applicants, and shall conduct hearings affording due process of law,
30 upon charges calling for discipline of a licensee. The board shall refer to the
31 appropriate prosecuting attorney information regarding any persons violating the
32 provisions of sections 344.010 to [344.100] **344.108** and may incur necessary
33 expenses therefor.

344.080. The members of the board, other than the director of the
2 [division of aging] **department of health and senior services** or his or her
3 designee, shall receive as compensation for their services fifty dollars for each day
4 devoted to the affairs of the board, and shall be entitled to reimbursement for
5 their expenses necessarily incurred in the discharge of their official duties.

344.105. 1. Any nursing home administrator possessing a current license
2 to practice as a nursing home administrator in this state who has maintained an
3 active license for at least ten years may retire his or her license by filing an
4 affidavit with the board which states the date on which the licensee retired from
5 such practice and such other facts as tend to verify the retirement as the board
6 may deem necessary. The affidavit shall be accompanied by a fee [of twenty-five
7 dollars] **as provided by rule**, made payable to the [division of aging]
8 **department of health and senior services**. Such request for retired status
9 may also be accomplished by signing the request for retired status that appears
10 on the nursing home administrator's application for license renewal and
11 returning such application to the board prior to June thirtieth of the year of
12 renewal of the administrator's active license, accompanied by a fee [of twenty-five
13 dollars] **as provided by rule**, made payable to the [division of aging]
14 **department of health and senior services**. Information provided in the
15 request for retired status shall be given under oath subject to the penalties for
16 the making of a false affidavit.

17 2. An individual who requests retired license status shall return his or
18 her original wall license and all other indicia of licensure to the board. Once the
19 board has received the original wall license from the licensee and the other
20 requirements for requesting retired status have been met, the board shall issue
21 a new license to the licensee indicating that the licensee is retired.

22 3. A retired license may be reactivated within five years of the granting
23 of the retired license by filing with the board evidence satisfactory to the board
24 of the completion of twenty clock hours of continuing education for each calendar
25 year the license was retired **accompanied by a fee as provided by rule**
26 **made payable to the department of health and senior services**. All clock
27 hours of continuing education shall be completed prior to the filing of the affidavit
28 or renewal form requesting reactivation of the retired license. If more than five
29 years have passed since the issuance of a retired license to a licensee, the licensee
30 shall follow the procedures for initial licensure stated in section 344.030.

31 4. No person shall practice as a nursing home administrator in this state

32 or hold himself or herself out as a nursing home administrator if his or her
33 license is retired.

34 5. Retired licensees shall remain subject to disciplinary action for
35 violations of this chapter and the rules promulgated thereunder.

344.108. 1. Any nursing home administrator possessing a current
2 license to practice as a nursing home administrator in this state may
3 place such license on inactive status by filing a written signed request
4 for inactive status with the board, accompanied by evidence
5 satisfactory to the board of completion of ten clock hours of continuing
6 education in the area of patient care and a fee as provided by rule
7 made payable to the department of health and senior services. This
8 request may also be accomplished by signing the request for inactive
9 status that appears on the nursing home administrator's application for
10 license renewal and returning such application to the board prior to
11 June thirtieth of the year of renewal of the administrator's active
12 license, accompanied by evidence satisfactory to the board of
13 completion of ten clock hours of continuing education in the area of
14 patient care and a fee as provided by rule made payable to the
15 department of health and senior services. Information provided in the
16 request for inactive status shall be given under oath subject to the
17 penalties of making a false affidavit.

18 2. An individual who requests that his or her license be placed
19 on inactive status shall return all indicia of licensure to the board.

20 3. An inactive license shall expire on June thirtieth of the year
21 following the year of issuance and every other year
22 thereafter. Licensees seeking to renew shall, during the month of May
23 of the year of renewal, file an application for renewal on forms
24 furnished by the board that include evidence satisfactory to the board
25 of completion of ten clock hours of continuing education in the area of
26 patient care and shall be accompanied by a renewal fee as provided by
27 rule payable to the department of health and senior services.

28 4. A license may be carried in inactive status for up to six years
29 from the date of issuance. If the licensee does not reactivate the
30 license during the six-year period, the license shall expire on the last
31 day of the six-year period.

32 5. A holder of an inactive license may reactivate the license by
33 submitting a written request to the board, accompanied by evidence

34 satisfactory to the board of the completion of forty clock hours of
35 continuing education and a fee as provided by rule made payable to the
36 department of health and senior services. The forty clock hours of
37 continuing education shall be earned no earlier than six months prior
38 to the request for reactivation and no later than six months after the
39 inactive license has been reactivated. If the holder of an inactive
40 license requests reactivation prior to completing the forty clock hours
41 of continuing education, the board shall issue a six-month interim
42 license to the licensee. The interim license shall expire six months
43 from the date of issuance or at such earlier time as the licensee earns
44 the forty clock hours of continuing education and submits evidence
45 satisfactory to the board of completion of the required hours.

46 6. A request for reactivation of an inactive license shall show,
47 under oath or affirmation of the nursing home administrator, a
48 statement that the nursing home administrator has not practiced
49 during the inactive period and is not presently practicing in this state.

50 7. No person shall practice as a nursing home administrator or
51 hold himself or herself out as a nursing home administrator in this
52 state while his or her license is inactive.

53 8. Inactive licenses shall remain subject to discipline for
54 violations of this chapter and the rules promulgated thereunder.

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